

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 MARC D. GREENBAUM
Supervising Deputy Attorney General
4 State Bar No. 138213
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2579
6 Facsimile: (213) 897-2804
E-mail: Marc.Greenbaum@doj.ca.gov
7 *Attorneys for Complainant*

8
9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12
13

14 In the Matter of the Accusation Against:

Case No. *2010-661*

15 **MARK EUGENE MCELREA**
417 N. Hidalgo Ave.
16 Alhambra, CA 91801

A C C U S A T I O N

17 **Registered Nurse License No. 488834**

18 Respondent.
19

20
21 Complainant alleges:

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
25 of Consumer Affairs.

26 2. On or about March 31, 1993, the Board of Registered Nursing issued Registered
27 Nurse License Number 488834 to Mark Eugene McElrea (Respondent). The Registered Nurse
28

1 License was in full force and effect at all times relevant to the charges brought herein and will
2 expire on November 30, 2010, unless renewed.

3 JURISDICTION

4 3. This Accusation is brought before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

8 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
9 that the Board may discipline any licensee, including a licensee holding a temporary or an
10 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
11 Nursing Practice Act.

12 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
13 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
14 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
15 Code, the Board may renew an expired license at any time within eight years after the expiration.

16 6. Section 2761 of the Code states, in part, as follows:

17 "The board may take disciplinary action against a certified or licensed nurse or deny an
18 application for a certificate or license for any of the following:

19 (a) Unprofessional conduct, which includes, but is not limited to, the following:

20 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
21 functions. . . ."

22 7. Section 2725 of the Code states, in pertinent part:

23 "(a) In amending this section at the 1973-74 session, the Legislature recognizes that
24 nursing is a dynamic field, the practice of which is continually evolving to include more
25 sophisticated patient care activities. It is the intent of the Legislature in amending this section at
26 the 1973-74 session to provide clear legal authority for functions and procedures that have
27 common acceptance and usage. It is the legislative intent also to recognize the existence of
28 overlapping functions between physicians and registered nurses and to permit additional sharing

1 of functions within organized health care systems that provide for collaboration between
2 physicians and registered nurses. These organized health care systems include, but are not
3 limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of
4 Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and
5 public or community health services.

6 (b) The practice of nursing within the meaning of this chapter [the Nursing Practice Act]
7 means those functions, including basic health care, that help people cope with difficulties in daily
8 living that are associated with their actual or potential health or illness problems or the treatment
9 thereof, and that require a substantial amount of scientific knowledge or technical skill, including
10 all of the following:

11 (1) Direct and indirect patient care services that ensure the safety, comfort, personal
12 hygiene, and protection of patients; and the performance of disease prevention and restorative
13 measures.

14 (2) Direct and indirect patient care services, including, but not limited to, the
15 administration of medications and therapeutic agents, necessary to implement a treatment, disease
16 prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician,
17 dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety
18 Code.

19 ...

20 (4) Observation of signs and symptoms of illness, reactions to treatment, general behavior,
21 or general physical condition, and (A) determination of whether the signs, symptoms, reactions,
22 behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based
23 on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or
24 changes in treatment regimen in accordance with standardized procedures, or the initiation of
25 emergency procedures.

26 (c) 'Standardized procedures,' as used in this section, means either of the following:
27
28

1 (1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2
2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through
3 collaboration among administrators and health professionals including physicians and nurses.

4 (2) Policies and protocols developed through collaboration among administrators and
5 health professionals, including physicians and nurses, by an organized health care system which
6 is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of
7 Division 2 of the Health and Safety Code.

8 The policies and protocols shall be subject to any guidelines for standardized procedures
9 that the Division of Licensing of the Medical Board of California and the Board of Registered
10 Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the
11 Board of Registered Nursing. . . ."

12 8. California Code of Regulations, title 16, section 1442, states:

13 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
14 the standard of care which, under similar circumstances, would have ordinarily been exercised by
15 a competent registered nurse. Such an extreme departure means the repeated failure to provide
16 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
17 situation which the nurse knew, or should have known, could have jeopardized the client's health
18 or life."

19 9. California Code of Regulations, title 16, section 1443, states:

20 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
21 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
22 exercised by a competent registered nurse as described in Section 1443.5."

23 10. California Code of Regulations, title 16, section 1443.5 states:

24 "A registered nurse shall be considered to be competent when he/she consistently
25 demonstrates the ability to transfer scientific knowledge from social, biological and physical
26 sciences in applying the nursing process, as follows:

27 ///

28 ///

1 (1) Formulates a nursing diagnosis through observation of the client's physical condition
2 and behavior, and through interpretation of information obtained from the client and others,
3 including the health team.

4 (2) Formulates a care plan, in collaboration with the client, which ensures that direct and
5 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
6 for disease prevention and restorative measures.

7 (3) Performs skills essential to the kind of nursing action to be taken, explains the health
8 treatment to the client and family and teaches the client and family how to care for the client's
9 health needs.

10 (4) Delegates tasks to subordinates based on the legal scopes of practice of the
11 subordinates and on the preparation and capability needed in the tasks to be delegated, and
12 effectively supervises nursing care being given by subordinates.

13 (5) Evaluates the effectiveness of the care plan through observation of the client's physical
14 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
15 communication with the client and health team members, and modifies the plan as needed.

16 (6) Acts as the client's advocate, as circumstances require, by initiating action to improve
17 health care or to change decisions or activities which are against the interests or wishes of the
18 client, and by giving the client the opportunity to make informed decisions about health care
19 before it is provided."

20 COST RECOVERY

21 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 STATEMENT OF FACTS

26 12. Respondent was employed by Huntington Memorial Hospital, located in Pasadena,
27 California, from approximately October 2, 1995 to May 9, 2008. On or about May 1, 2008,
28 Respondent was working the night shift at the Della Martin Center for Behavioral Services at

1 Huntington Hospital. At about 12:48 a.m., Patient No. M1039866 was admitted to the psychiatric
2 unit, pursuant to a "5150 hold,"¹ and was placed on Suicide Precautions Level 2. Respondent
3 completed the admission process on the patient and allowed the patient to keep his shirt, pants,
4 and shoes, with the shoelaces still intact on the shoes. The patient's belt was sent home.

5 13. Huntington Memorial Hospital Policy No. 8614.226, effective October 2001, clearly
6 required that patient shoelaces were considered potentially dangerous items to psychiatric patients
7 and were to be removed from the patient and could not be used by the patient while hospitalized.

8 14. On or about May 2, 2008, Patient No. M1039866 was found in the bathroom of his
9 room, hanging by his neck from the shower control valves. The patient had used his own
10 shoelaces to hang himself. A Code Blue was called, but the patient expired.

11 15. On or about May 9, 2008, Respondent voluntarily resigned, in lieu of termination,
12 due to his failure to follow hospital policies and procedures relating during the admission of the
13 Patient No. M1039866.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Incompetence, Negligence and/or Gross Negligence)**

16 16. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1), on
17 the grounds of unprofessional conduct in that Respondent committed acts of incompetent and/or
18 gross negligence, with the meaning of California Code of Regulations, title 16, sections 1442,
19 1443, and 1443.5, involving the care and treatment of Patient No. M1039866. The circumstances
20 are described more fully in paragraphs 12-15, above, and as follows:

21 a. Respondent failed to follow hospital policies and procedures requiring removal of
22 potentially dangerous contraband from a patient admitted involuntarily to the psychiatric unit due
23 to suicidal thoughts. The patient subsequently used the contraband to commit suicide.

24 b. Respondent failed to provide direct and indirect patient care services to ensure the
25 safety of a potentially suicidal patient.

26
27 ¹ A "5150 Hold" is an involuntary 72 hour hospital admission to a psychiatric unit when it
28 is determined that the patient poses a danger to themselves, a danger to others, or is gravely
disabled as the result of a psychiatric medical disorder.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 488834, issued to Mark Eugene McElrea;
2. Ordering Mark Eugene McElrea to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/25/10 *Louise R. Bailey*
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2010600529
60543499.doc